IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO. 5913 OF 1991

Shri Dashrath Maruti Pandhare,
Occupation-service,
R/at 109 Ganesh Peth, .. Petitioner
Pune- 411 002. Org. Plff.

V/s.

Shri Chandrakant Jadhavji Chandan-
Alias Thakkar, Occupation-Business.
Residing at 326-D Rasta Peth, .. Respondent.
Pune 411 002. Orig. Deft.

Mr. V.B. Rajure and Mr. A.S. Chandurkar for the petitioner.

None for the respondent.

CORAM : ANOOP V.MOHTA J.

DATE : 29TH JUNE, 2005.

ORAL JUDGMENT

. The petitioner-landlord has invoked the provision of Article 227 of the Constitution of India and thereby challenged the concurrent finding of facts, whereby, both the Courts below, after considering the material, on the record, dismissed the suit for eviction, filed under the provisions of Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (For

short Bombay Rent Act) for possession of the premises from the respondent-tenant.

2. Heard the learned Counsel appearing forthe petitioner. None appeared for the respondent. With the assistance of the learned advocate appearing for the petitioner, we have gone through the reasoning amd the evidence led by the parties.

3. Both the Courts below held that the petitioner-landlord failed to prove that the respondent-tenant has erected permanent structure on the suit premises and the respondent-defendant has acquired the vacant possession of the suitable residential accommodation; and petitioner-plaintiff failed to prove his bonafide and reasonable need for his own use and occupation.

4. After going through the evidence, as well as, the reasoning, in so far as, bonafide need of the petitioner-landlord is concerned, and basically the evidence of Dashrath Pandhare (PW.1) and Pradip Pandhare (PW2) (son of the petitioner), I am of the view that the reasoning given by the Courts below is within the

frame work of law, and the record. The petitioner, as rightly observed, unable to demonstrate and point out the bonafide need of the premises in question.

5. On the contrary, as specific plea was raised, that he (landlord) was occupying the said premises on rent but remained un- supported for want of evidence. The area which is in occupation of the petitioner is admittedly about 1200 sq. feet. The need as sought to be contended, by the landlord is not reasonable and bonafide for want of supporting evidence. Mere filing of the proceeding under Bombay Rent Act will not itself is sufficient to grant such decree of eviction. The landlord, if takes the particular plea to claim the possession of the premises and the same remained unproved, in such circumstances, as rightly observed by the Courts below, the decree for possession on those unsupported pleas cannot be granted. It destroys the case of the landlord.

6. In such circumstances, both the Courts are right in observing that there is no question of considering the case of comparative hardship. However, rightly observed, if the decree of eviction is granted, greater

hardship will be caused to the tenant and not to the landlord.

7. So far as other issues regarding permanent or suitable residential accommodation, by the tenant, both the Courts have considered the aspect in negative and against the petitioner-landlord, as new premises has been purchased by the mother of the tenant and occupying the same with the brother of the tenant.

8. As noted above, and after going through the record, there is no case made out or born out even from the record to interfere with the concurrent finding of fact. The view taken by the Courts below is plausible and reasonable view.

9. Therefore, the petition for the above reasons is dismissed. Rule discharged. No order as to cost.

[ANOOP V. MOHTA, J.]